

215317

December 8, 2005

*Via Hand Delivery*

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K St. N.W.  
Washington, D.C. 20423

ENTERED  
Public Hearings

DEC 8 2005

Public Hearing



RE: STB Docket No. 34795, *Roquette America, Inc. – Petition for Exemption from 49 U.S.C. § 10901 to Construct a New Line of Rail in Keokuk, Iowa*

Dear Secretary Williams:

On December 6, 2005, Keokuk Junction Railway Co. ("KJRY") filed a letter in this docket, requesting the Board to issue an order directing Roquette America Railway, Inc. ("Roquette") to file an environmental report, pursuant to 49 C.F.R. § 1105.7(a), before the Board proceeds with further consideration of Roquette's Petition for Exemption. KJRY professes concern that Roquette has not complied with the requirements of the National Environmental Policy Act by failing to submit an environmental report with its Petition.

Apparently, KJRY is either unfamiliar with or has chosen to ignore 49 C.F.R. § 1105.10(d), which provides that:

The environmental reporting requirements that would otherwise apply *will be waived* if a railroad hires a consultant, SEA approves the scope of the consultant's work, and the consultant works under SEA's supervision. In such a case, the consultant acts on behalf of the Board, working under SEA's direction to collect the needed environmental information and compile it into a draft EA or draft EIS, which is then submitted to SEA for its review, verification, and approval.

[emphasis added] In Ex Parte No. 585, *Policy Statement on Use of Third-Party Contracting in Preparation of Environmental Documentation*, 2001 STB LEXIS 265, at \*6 (served March 19, 2001), the STB declared that, under this provision, "the applicant's obligation to submit an environmental and historic report is waived."

The Board approved Roquette's selection of a third-party consultant in a letter dated July 11, 2005. In addition, Roquette's decision to engage a third-party consultant was clearly stated on page 11 of its

December 8, 2005

Page 2

Petition for Exemption. Thus, KJRY clearly was on notice of this fact. In light of this fact and the Board's own rules, there is no basis for granting KJRY's request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey O. Moreno', written in a cursive style.

Jeffrey O. Moreno

Cc: William A. Mullins, Counsel for Keokuk Junction Railway Co.  
Victoria J. Rutson, Chief, Section of Environmental Analysis